

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

R. ALEXANDER ACOSTA, Secretary of
Labor, United States Department of Labor;

Plaintiff,

vs.

NEBRASKA RAILCAR CLEANING
SERVICES, LLC,
ADAM T. BRAITHWAITE, and
STEVEN M. BRAITHWAITE,

Defendants.

8:18CV464

ORDER

This matter is before the Court on the “Motion for Extension of Time to Serve Defendants and for Entry of Order Directing the United States Marshals Service to Serve Defendants” ([Filing No. 3](#)). Plaintiff requests the Court order service be made by the United States Marshal Service pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure. See [Fed. R. Civ. P. 4\(c\)\(3\)](#) (“At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal. . .”).

Excluding cases filed by plaintiffs authorized to proceed in forma pauperis or as a seaman, and cases for which service by a marshal is specifically mandated or authorized by statute, a court “may” order service by a marshal or special appointee if the court is convinced such service is necessary to assure that service will occur. See [Fed. R. Civ. P. 4\(c\)\(3\)](#). A plaintiff must first seek service by private means whenever feasible rather than impose the burden on the Marshal, which is intended “to reduce the burden on the federal marshals.” See, e.g., [Service by Marshal; Which Marshal May Serve](#), 4A Fed. Prac. & Proc. Civ. § 1090 (4th ed. 2017).

Plaintiff has attempted to serve the defendants by certified mail, sending three packets to each defendant containing “a cover letter, a Notice of Lawsuit and Request to Waive Service of Summons (Form AO 398), two copies of the Waiver of Service of Summons (Form AO 399), a copy of the Complaint, and a prepaid, self-addressed envelope for return of the Waiver to Plaintiff.” To date, Plaintiff has not received any response from any Defendant and no defendant has returned the certified mail receipt. Under the circumstances, the Court finds service by the United States Marshal is appropriate. Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Extension of Time to Serve Defendants and for Entry of Order Directing the United States Marshals Service to Serve Defendants ([Filing No. 3](#)) is granted.
2. Plaintiff shall have an extension of time to March 1, 2019, to complete service of process on the defendants.
3. To obtain service of process on the defendants by the U.S. Marshal, Plaintiff must complete and return summonses forms and a USM-285 form. Upon receipt of the completed forms, the Clerk of the court will sign the forms, to be forwarded with a copy of the Complaint to the U.S. Marshal for service of process.

Dated this 11th day of January, 2019.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge